

Message Text

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ACTION ARA-10

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 1945

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FOR ARA - MR. SHLAUDEMANN, L-MR. LEIGH

E.O. 11652: N/A

TAGS: BDIS, EINV, EIND, EMIN, PFOR, PE

SUBJECT: TEXT OF MARCONA AGREEMENT

REF: LIMA 8676

FOLLOWING IS ENGLISH LANGUAGE TEXT OF SEPTEMBER 22ND
AGREEMENT ON MARCONA. SPANISH TEXT FOLLOWS SEPTTEL.
BEGIN QUOTE:

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND THE GOVERNMENT OF PERU

THE GOVERNMENTS OF THE UNITED STATES OF AMERICA
AND PERU, WITH THE OBJECTIVE OF ARRIVING AT A DEFINI-
TIVE SETTLEMENT CONCERNING JUST COMPENSATION FOR THE
EXPROPRIATED ASSETS OF THE MARCONA MINING COMPANY, WHOSE
MINING METALLURGICAL COMPLEX IN PERU WAS NATIONALIZED
IN ACCORDANCE WITH THE STIPULATIONS OF DECREE LAW 21228
HAVE DECIDED TO CONCLUDE THE FOLLOWING AGREEMENT:

ARTICLE 1 - IN VIEW OF THE DIFFERENCES ARISING IN
THE VALUATION OF THE PROPERTIES OF THE NORTH AMERICAN
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FIRM, THE MARCONA MINING COMPANY, SUBJECT TO EXPRO-

PRIATION BY THE GOVERNMENT OF PERU, THE GOVERNMENT OF THE UNITED STATES OF AMERICA EXTENDED ITS GOOD OFFICES SO THAT RELATIONS BETWEEN THE TWO COUNTRIES WOULD NOT BE AFFECTED BY CERTAIN ASPECTS OF A MATTER WHICH IS GOVERNED BY THE LAWS OF THE EXPROPRIATING COUNTRY AND BY PRINCIPLES OF INTERNATIONAL LAW.

WITHIN THESE PRINCIPLES AND BASED ON THE REPORTS OF THE COMMISSIONS DESIGNATED BY THE GOVERNMENT OF PERU FOR THE VALUATION OF THE ASSETS AND LIABILITIES AND THE DETERMINATION OF DEBTS, THE GOVERNMENT OF PERU AGREES TO PAY TO THE MARCONA MINING COMPANY AS JUST COMPENSATION FOR ITS EXPROPRIATED ASSETS THE SUM OF \$61,440,000 (SIXTY-ONE MILLION FOUR HUNDRED FORTY THOUSAND U.S. DOLLARS), IN THE FOLLOWING MANNER:

A) \$37 MILLION (THIRTY-SEVEN MILLION U.S. DOLLARS) IN CASH, BY PROMISSORY NOTE, WHICH WILL BE ACCEPTED BY THE BANCO DE LA NACION IN ITS CAPACITY AS FINANCIAL AGENT OF THE STATE, AND WHICH WILL BE PAID ON THE DATE ON WHICH THE NECESSARY FINANCING BECOMES AVAILABLE, UNDER THE TERMS AND CONDITIONS FIXED IN THE PROMISSORY NOTE WHICH REFLECTS THIS OBLIGATION.

B) \$22,440,000 (TWENTY-TWO MILLION FOUR HUNDRED FORTY THOUSAND U.S. DOLLARS), AS PARTIAL PAYMENT THROUGH THE SALE EXCLUSIVELY IN THE UNITED STATES MARKET OF 3,740,000 LONG TONS (THREE MILLION SEVEN HUNDRED FORTY THOUSAND) OF IRON ORE IN THE FORM OF PELLETS, AND THAT IS CALCULATED ON THE BASIS OF THE \$6 (SIX U.S. DOLLARS) PER TON THAT IS ESTIMATED MARCONA, INC. SHOULD OBTAIN ABOVE THE SALE PRICES FIXED IN THE CONTRACT IT WILL CONCLUDE WITH MINERO PERU COMERCIAL, WHICH ARE AS FOLLOWS: (\$18 (EIGHTEEN U.S. DOLLARS) PER TON FOR THE FIRST 1.1 MILLION TONS, \$20 (TWENTY U.S. DOLLARS) PER TON FOR THE SUCCEEDING TWO MILLION TONS AND \$23 (TWENTY-THREE U.S. DOLLARS) PER TON FOR THE FINAL 640,000 TONS.

C) \$2,000,000 (TWO MILLION U.S. DOLLARS) DERIVED LIMITED OFFICIAL USE

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FROM THE FREIGHT CONTRACT CONCLUDED BETWEEN THE COMPANIA PERUANA DE VAPORES AND MARCONA CARRIERS ON DECEMBER 11, 1975, WHICH REMAINS IN FORCE UNTIL MARCH 31, 1977, UNDER COMPETITIVE CONDITIONS, AND WHICH RESULTS FROM CALCULATING (\$1.00 (ONE U.S. DOLLAR) PER TON) IN THE RATES ESTABLISHED UNDER SAID CONTRACT.

ARTICLE II - THE GOVERNMENT OF THE UNITED STATES CONFIRMS

THAT THE PAYMENT OF THE \$37 MILLION (THIRTY-SEVEN MILLION U.S. DOLLARS) CASH THROUGH A PROMISSORY NOTE AND THE FULFILLMENT OF THE CONTRACTUAL OBLIGATIONS THAT THE GOVERNMENT OF PERU ASSUMES, FOR IMPLEMENTATION BY ITS PERTINENT PUBLIC ENTITIES, AS STIPULATED IN ARTICLE I, ALL THE RESPONSIBILITIES AND OBLIGATIONS OF THE GOVERNMENT OF PERU TOWARD THE MARCONA CORPORATION ITS SUBSIDIARIES, BRANCHES OR AFFILIATES ARISING OUT OF THE NATIONALIZATION BY PERU OF THE PERUVIAN BRANCH OF THE MARCONA MINING COMPANY, INCLUDING ALL OF THE OBLIGATIONS RESULTING FROM THE OFF-LOADING OF THE CARGO OF THE SS ELIZABETH LYKES AT THE PORT OF CALLAO ON AUGUST 5, 1975, WHICH PASSED TO THE OWNERSHIP OF HIERRO-PERU, WILL BE SATISFIED.

ARTICLE III - IN VIEW OF THE INTERGOVERNMENTAL NATURE OF THIS AGREEMENT, THE GOVERNMENT OF PERU DECLARES THAT THERE NO LONGER EXIST ANY LIABILITIES FOR THE PAYMENT OF TAXES, OR ANY OTHER CHARGE OR OBLIGATION, OR LEGAL ACTION, CIVIL OR OTHERWISE, AGAINST THE MARCONA CORPORATION OR ITS SUBSIDIARIES, BRANCHES OR AFFILIATES, INCLUDING THE MARCONA MINING COMPANY, OR AGAINST THE PRESENT OR FORMER OFFICIALS OF ANY OF THEM, REGARDING THEIR ACTIVITIES AS EMPLOYEES OF MARCONA CORPORATION, ITS SUBSIDIARIES, BRANCHES OR AFFILIATES, PRIOR TO THE CONCLUSION OF THIS AGREEMENT. NOR WILL THERE BE ANY CLAIMS OR PROCEEDINGS BASED ON SUCH TAXES, CHARGES, OBLIGATIONS, OR LEGAL ACTIONS AFFECTING THE NATURAL OR JURIDICAL PERSONS REFERRED TO ABOVE.

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ARTICLE IV - AFTER THE ENTRY INTO FORCE OF THIS AGREEMENT, NEITHER GOVERNMENT WILL PRESENT TO THE OTHER, ON ITS BEHALF OR ON BEHALF OF NATURAL OR JURIDICAL PERSONS OF ITS NATIONALITY, ANY CLAIM OR DEMAND ARISING OUT OF THE NATIONALIZATION BY THE GOVERNMENT OF PERU OF MARCONA MINING COMPANY'S MINING-METALLURGICAL COMPLEX IN PERU OR OF THE OPERATIONS OF THE MARCONA MINING COMPANY OR ITS SUBSIDIARIES. IN THE EVENT THAT SUCH CLAIMS ARE PRESENTED DIRECTLY BY NATIONALS OR JURIDICAL PERSONS OF ONE COUNTRY TO THE GOVERNMENT OF THE OTHER, SUCH GOVERNMENT WILL REFER THEM TO THE GOVERNMENT TO WHICH THE NATIONAL OR JURIDICAL PERSON BELONGS.

THE PRECEDING PARAGRAPH OF THIS ARTICLE IS SUBJECT TO THE PAYMENT OF \$37 MILLION (THIRTY-SEVEN U.S. MILLION DOLLARS) IN CASH AND PERFORMANCE OF THE CONTRACTUAL OBLIGATIONS REFERRED TO IN ARTICLE I OF THIS AGREEMENT.

ARTICLE V - THE GOVERNMENT OF PERU AFFIRMS THAT IN ACCORDANCE WITH ARTICLE 12 OF DECREE LAW 21228, HIERRO-PERU HAS ASSUMED, BY SUBROGATION, THE OUTSTANDING OBLIGATIONS OF THE PERUVIAN BRANCH OF THE MARCONA MINING COMPANY TO SUPPLIERS AND LENDING INSTITUTIONS, AS WELL AS THE SALARIES AND SOCIAL BENEFITS OF ITS EMPLOYEES.

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ARTICLE VI - IT IS THE UNDERSTANDING OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA THAT THE MARCONA CORPORATION RECOGNIZES THAT THE UNDERTAKINGS OF THE GOVERNMENT OF PERU SPECIFIED IN THE PRESENT AGREEMENT, ONCE IMPLEMENTED, CONSTITUTE THE FULL AND FINAL SETTLEMENT OF ITS CLAIMS RESULTING FROM THE NATIONALIZATION, AND THAT IT SIMILARLY ACCEPTS AND PROMISES TO CARRY OUT FULLY AND IN GOOD FAITH, THE CONTRACTS WITH MINERO PERU COMERCIAL ENTERED INTO RELATING TO THE SALE OF ORE, AND WITH COMPANIA PERUANA DE VAPORES RELATING TO THE FREIGHT CONTRACT DATED DECEMBER 11, 1975, UNTIL ITS EXPIRATION ON MARCH 31, 1977.

ARTICLE VII - THE PRESENT AGREEMENT WILL ENTER INTO FORCE UPON ITS APPROVAL BY THE GOVERNMENT OF PERU, AND UPON THE SIGNATURE AND ACCEPTANCE OF THE PROMISSORY NOTE AND ORES SALES CONTRACT REFERRED TO IN THIS AGREEMENT. DONE IN LIMA THIS 22ND DAY OF SEPTEMBER, 1976, IN ENGLISH AND SPANISH, BOTH VERSIONS BEING EQUALLY AUTHENTIC.

FOR THE GOVERNMENT OF THE FOR THE REPUBLIC OF PERU
UNITED STATES OF AMERICA

CARLYLE E. MAW JOSE DE LA PUENTE RADBILL
SPECIAL REPRESENTATIVE MINISTER FOR FOREIGN AFFAIRS

JOBERT W. DEAN
AMBASSADOR END QUOTE.
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